

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMIE HAWLEY,

Petitioner,

: Case No. 3:21-cv-091

- vs -

District Judge Michael J. Newman
Magistrate Judge Michael R. Merz

WARDEN, Belmont
Correctional Institution,

:

Respondent.

TRANSFER ORDER

This habeas corpus case, brought *pro se* by Petitioner Jamie Hawley under 28 U.S.C. § 2254, is before the Court for initial screening under Rule 4 of the Rules Governing § 2254 cases. Under that Rule, the clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

Petitioner Hawley seeks relief from his conviction in the Common Pleas Court of Montgomery County, Ohio, in *State v. Hawley*, Case No. 2006-CR-00348 (Petition, ECF No. 1, PageID 20).

Examination of the docket of this Court reveals that Petitioner previously filed for habeas relief from this same conviction in Case No. 3:11-cv-360. That case was dismissed with prejudiced

by District Judge Timothy Black on March 29, 2012. Hawley did not appeal, but his subsequent request to the Sixth Circuit in that case for permission to file a second or successive petition was denied.

In Case No. 3:15-cv-198 Petitioner again filed for habeas corpus relief from the same Montgomery County Common Pleas Court judgment of conviction. This Court transferred the case to the Sixth Circuit Court of Appeals for its consideration of whether Petitioner should be permitted to file a second or successive petition. The docket does not contain notice of any action by the circuit court in that case.

In Case No. 3:16-cv-453 Hawley again attacked the same judgment of conviction. This Court transferred the case to the Sixth Circuit and that court refused permission to proceed on a second or successive petition.

Under 28 U.S.C. § 2244(b), a District Court lacks jurisdiction to consider a second or successive habeas corpus petition without permission from the circuit court. *Burton v. Stewart*, 549 U.S. 147, 149 (2007); *Franklin v. Jenkins*, 839 F.3d 465(6th Cir. 2016). When a second or successive petition is filed in a District Court, that court must transfer the case to the circuit court for its consideration of whether the petitioner may proceed. *In re Sims*, 111 F.3d 45 (6th Cir. 1997).

Based on review of the dockets in the cases noted above, the Magistrate Judge finds the Petition here is a second or successive application for habeas corpus relief from the same Montgomery County Court of Common Pleas judgment involved in the prior cases. Accordingly, it is hereby ordered that the Clerk TRANSFER this case to the Sixth Circuit Court of Appeals.

March 16, 2021.

s/ *Michael R. Merz*
United States Magistrate Judge